



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 14, 1995

Mr. Richard D. Monroe  
Deputy General Counsel  
Texas Department of Transportation  
Dewitt C. Greer State Highway Bldg.  
125 East 11th Street  
Austin, Texas 78701

OR95-959

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35116.

The Texas Department of Transportation (the "department") has received a request for an "anonymous" letter containing the name of the requestor. You have submitted the letter for our review and claim that section 552.101 of the Government Code excepts the letter from required public disclosure. Specifically, you claim that common-law privacy and the informer's privilege apply to this request for information. We address your arguments in turn.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information must be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld on the basis of common-law privacy, if: "(1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public." 540 S.W.2d at 685. We have reviewed the document submitted for our review. It does not contain any intimate or embarrassing information. Therefore, you may not withhold the document on the basis of common-law privacy.

You also claim that the document is excepted from disclosure on the basis of false-light privacy. False light privacy is not an actionable tort in Texas. *See Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (Tex. 1994). Therefore, a governmental body

may not withhold information under section 552.101 of the Government Code merely because it might place a person in a false light. *See* Open Records Decision No. 579 (1990).

Finally, you claim that you may withhold the letter based on the informer's privilege. The informer's privilege protects the identity of persons who report violations of the law to officials having the duty of enforcing particular laws. *See Roviario v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege does not, however, apply to information that does not describe illegal conduct. Open Records Decision No. 515 (1988) at 5. For example, the informer's privilege aspect of section 552.101 does not protect memoranda and written statements complaining of a fellow employee's work performance when those statements do not reveal the violation of specific laws to the officials charged with enforcing those laws. *See* Open Records Decision Nos. 579 (1990) at 8, 515 (1988) at 3. Significantly, however, the informer's privilege protects the content of the communication only to the extent that it identifies the informant. *Roviario*, 353 U.S. at 60.

You claim that the letter concerns "possible violations of Civil and Criminal law." However, you do not explain with any specificity which laws have been allegedly violated or that the department has a duty of enforcing any of those laws. Moreover, the letter is anonymously written. We do not believe that it identifies the "informant." Therefore, the department may not withhold the letter on the basis of the informer's privilege.

In conclusion, you must release the submitted document in its entirety. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/rho

Ref.: ID# 35116

Enclosure: Submitted document

cc: Mr. James Sexton  
(w/o enclosure)